



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #125

Railroad Crossing Hearing Examiner (DOA -- General Agency Provisions and PSC -- Office of the Commissioner of Railroads)

[LFB 2001-03 Budget Summary: Page 54, #7 and Page 577, #1]

CURRENT LAW

The Office of the Commissioner of Railroads (OCR) regulates railroads and monitors the safety of railroad crossings. The Railroad Commissioner may order the closing of a railroad crossing or the installation of a safety improvement, such as crossing gates or lights. Any physical change to a crossing, such as a realignment or closing of the road or the creation of a new crossing, requires a hearing. OCR's hearing examiner conducts the hearings and issues a recommended ruling, which is acted upon by the Commissioner. Certain matters related to railroad regulation, such as railroad employee safety, may also be subject to hearings.

The Office has 7.0 FTE positions, including 1.0 program assistant, 4.0 railroad safety analysts, 1.0 attorney, who serves as the hearing examiner for the Office, and the Railroad Commissioner, who is appointed by the Governor for a six-year term. The operations of the Office are funded through assessments on railroads. Base funding for the Office is \$504,900 PR.

GOVERNOR

Delete 1.0 PR attorney position in the Office to reflect a transfer of the position to DOA's Division of Hearing and Appeals. Specify that the incumbent employee in this position would retain the position and that the employee would have all the rights and the same status under state employment relations provisions that the employee had in OCR immediately prior to the transfer. Specify that the employee would not be required to serve a probationary period if the employee had already achieved permanent status. Provide \$151,400 PR in 2001-02 and \$141,900 PR in 2002-03 to fund charges for railroad closing and modification hearings conducted by the Division of Hearings and Appeals, which are currently conducted by OCR's

attorney. Provide \$151,400 PR in 2001-02 and \$141,900 PR in 2002-03 and 1.5 PR positions annually in DOA's Division of Hearings and Appeals to reflect the transfer of the attorney from OCR and the creation of 0.5 support position.

DISCUSSION POINTS

1. The bill would transfer the responsibility for holding railroad hearings from OCR to DOA's Division of Hearings and Appeals. OCR's current attorney, who conducts the hearings, would be transferred to DOA and OCR would be billed for the services provided by DOA.

2. In addition to creating an attorney position in DOA's Division of Hearings and Appeals, the bill would create a 0.5 clerical position to support the new attorney position. DOA indicates that the total amount of funding needed to support the 1.5 positions in DOA is \$151,400 PR in 2001-02 and \$141,900 PR in 2002-03, which is the amount provided by the bill.

3. The bill would increase OCR's funding by the amount needed to support the 1.5 positions in DOA, but would not decrease funding to reflect the elimination of OCR's attorney position. Consequently, the amount in OCR's budget to pay DOA for hearings services exceeds the amount that DOA indicates is necessary by \$103,900 PR annually. The net effect of the elimination of the OCR attorney and providing the funding to support 1.5 positions in DOA is \$47,500 PR in 2001-02 and \$38,000 PR in 2002-03. DOA indicates that the Governor's intent was to provide this amount of funding.

4. DOA indicates that the bill would transfer the attorney position from OCR to DOA to allow OCR to take advantage of administrative efficiencies. While one hearing examiner position was created to accommodate OCR's normal workload, in times when the demand for hearings is particularly high, more than one DOA hearing examiner may be dedicated to railroad hearings.

5. While there may be some advantages of requiring OCR to utilize DOA's hearing examiners and support services, there may also be some disadvantages with this approach. OCR indicates that the Office's attorney spends about 60% to 80% of his time on hearings. The remainder of the attorney's time is spent on other duties, including advising the Commissioner and other staff on issues of state and federal law, answering legal questions from local governments and the general public and assisting in the preparation of orders of the Commissioner. If the OCR's attorney is transferred to DOA, the Office would be left without legal counsel to perform these non-hearing duties.

6. The nonstatutory provision in the bill to reflect the transfer erroneously creates 1.0 GPR attorney position in DOA, instead of 1.0 PR attorney position. If the Governor's recommendation is adopted, this provision should be modified.

ALTERNATIVES

1. Approve the Governor's recommendation to delete 1.0 PR attorney position in the Office to reflect a transfer of the position to DOA's Division of Hearing and Appeals, but modify the bill by reducing the amount provided for OCR's budget by \$103,900 PR annually, to reflect the deletion of the salary and fringe benefit costs of OCR's attorney. The net increase in funding associated with this alternative would be \$47,500 PR in 2001-02 and \$38,000 PR in 2002-03. Specify that the incumbent employee in this position would retain the position and that the employee would have all the rights and the same status under state employment relations provisions that the employee had in OCR immediately prior to the transfer. Specify that the employee would not be required to serve a probationary period if the employee had already achieved permanent status. Provide \$151,400 PR in 2001-02 and \$141,900 PR in 2002-03 and 1.5 PR positions annually in DOA's Division of Hearings and Appeals to reflect the transfer of the attorney from OCR and the creation of 0.5 support position.

Alternative 1	PR
2001-03 FUNDING (Change to Bill)	- \$207,800

2. Maintain current law.

Alternative 2	PR
2001-03 FUNDING (Change to Bill)	- \$586,600
2002-03 POSITIONS (Change to Bill)	- 0.50

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